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IN THE
Supreme Court of the United States
OCTOBER TERM, 1968

No. ~~100-111111~~ 20

JOYCE C. THORPE, *Petitioner*

v.

HOUSING AUTHORITY OF THE CITY OF DURHAM

On Writ of Certiorari to the Supreme Court of North Carolina

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI TO THE SUPREME COURT OF
NORTH CAROLINA**

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No. 712

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QUESTION PRESENTED

Did the Supreme Court of North Carolina, in *Housing Authority v. Thorpe*, 271 NC 468, 157 SE 2d 147 (1967), decide a Federal question of substance in a way probably not in accord with applicable decisions of the Supreme Court of the United States in holding that a Directive issued by DHUD requiring conferences by management with tenants and information to tenants as to reasons for evictions before the eviction of such tenants would not apply retroactively

to prevent the Housing Authority from successively maintaining an action in ejectment in the State courts in this case?

I.

In Holding That the DHUD Circular of February 7, 1967, Had No Retroactive Effect Upon This Action in Eviction Commenced on or About August 11, 1965, and Reaching Final Judgment in the Supreme Court of North Carolina on May 25, 1966, Raised No Federal Question of Substance.

This Court can properly assume that the Housing Authority of the City of Durham is now complying with the DHUD Directive in question concerning the eviction of tenants. There is no indication or allegations that it is not—and it is in fact doing so. Moreover, the Petitioner, Thorpe, quotes in her Petition a letter from the Assistant Secretary of the Department of Housing and Urban Development dated July 25, 1967, stating that DHUD intends to enforce the Circular to the fullest extent of its ability. The letter further states that enforcement will probably be accomplished by judicial process or if necessary by the take over and operation of the projects by DHUD under the provisions of Section 22 of the United States Housing Act rather than by cutting off funds for the local Housing Authority.

II.

The Supreme Court of North Carolina Made It Clear That It Was Not Holding That the Petitioner Could Be Evicted for an Unconstitutional Reason.

In its opinion, the Supreme Court of North Carolina dealt specifically with the findings of the trial court that the eviction of the Petitioner did not result from her organizational activities and pointed out that she had not established by the introduction of any evi-

dence that any unlawful reason was behind her eviction. The court stated that "We conclude that fifteen days prior to the expiration date of the lease, the Housing Authority, without explanation, notified the tenant that her lease would not be renewed. That procedure followed the terms of the lease. Before the expiration date, the defendant demanded a hearing. The Housing Authority conferred with her counsel but not with her. She refused to vacate, charging her lease was being vacated because of her having been elected President of the Parents' Club. No evidence was offered as to the purposes of the Club or that its activities conflicted with the interests of the Authority. The manager of the Authority stated unequivocally under oath that the termination of the lease had no connection whatever with the tenant's activities in connection with the Parents' Club. Judge Bickett so found. The finding was supported by competent evidence and should be conclusive."

It is clearly established on competent and proper evidence, and upon a proper hearing, that the ground alleged by the Petitioner to be the cause of her eviction was not in fact the cause of that eviction.

III.

The Petitioner, During the Course of Her Eviction Trial, Had Ample Opportunity To Explore the Reasons for Her Eviction by the Housing Authority, Had She Chosen To Do So.

As has been pointed out in previous Briefs filed here, there are provisions in the North Carolina Statutes that effectively permit litigants to examine opposing parties and agents and employees of opposing parties prior to the trial of the case. (See Appendix hereto attached). The Petitioner, Thorpe, did not take ad-

vantage of this. Moreover, when the matter came on for trial in the trial court, that is to say the Superior Court, the Petitioner, Thorpe, did not seek to cross examine the Executive Director of the Housing Authority, as her counsel would have had a clear right to do, with respect to the reasons for the eviction, but instead simply stipulated what the testimony of the Executive Director would be on direct examination.

As a result, the Petitioner, when she had the full opportunity to do so, elected not to inquire into the reasons for her eviction but instead made an affirmative assertion as to what the reason was. On the evidence this was found not to be fact.

CONCLUSION

For the reasons stated therefor, it is respectfully submitted that the Writ of Certiorari prayed for should not be granted.

Respectfully submitted,

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